

On appeal respondent contends claimant has failed to prove his injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

(1) On an appeal from a preliminary order, the Appeals Board does have jurisdiction to review a finding that an injury arose out of and in the course of his employment. K.S.A. 44-534a.

(2) Claimant has established by a preponderance of the credible evidence that his injury arose out of and in the course of his employment.

Claimant testified that he injured his knee when he was thrown off the pallet jack he was operating to unload a truck at Associated Grocers Warehouse. Emergency room records reflect the same history. Respondent countered with the testimony of an Associated Grocer employee who testified he saw claimant after the alleged injury and noticed nothing in claimant's movements to suggest an injury. He also testified the pallet jack had become unplugged and could not have become unplugged by the accident claimant described. This witness was unable, however, to identify claimant at the hearing and initially gave the wrong dock number as the location where he had seen claimant.

The Appeals Board finds it more probable than not that claimant's injury did arise out of and in the course of his employment as alleged. Accordingly the July 14, 1994, Order for medical benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 14, 1994, Preliminary Hearing Order by Administrative Law Judge Steven J. Howard should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Daniel J. Smith, Attorney at Law, Overland Park, KS 66211
Gary R. Terrill, Attorney at Law, Overland Park, Ks 66282
Steven J. Howard, Administrative Law Judge
George Gomez, Director